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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,546	06/29/2001	Hiroyuki Oyanagi	CSC-033	6565

959 7590 03/12/2003

LAHIVE & COCKFIELD
28 STATE STREET
BOSTON, MA 02109

EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 03/12/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/895,546

Applicant(s)

OYANAGI ET AL.

Examiner

Stephen J. Kalafut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other: |

Claims 3, 7 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are confusing since they are drawn to a phosphoric acid fuel cell, but recite that the electrolyte may be either phosphoric acid, sulfuric acid, or methysulfuric acid. How can the fuel cell be considered to be a phosphoric acid fuel cell, if something besides phosphoric acid is the electrolyte?

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maru *et al.* (US 4,362,788) in view of Savinell *et al.* (US 5,525,436).

Maru *et al.* disclose a fuel cell in which the pressure of the fuel gas is lower than the pressure of the oxidant (column, lines 57-64). This would mean that the pressure on the cathode is greater than the pressure the anode. The oxidant is air (figure 1, drawing numeral 11), while the fuel would be hydrogen, since a reformer (27) is used. The present claims differ from Maru *et al.* by reciting that the phosphoric electrolyte is contained in a matrix made of a basic polymer such as polybenzamidazole, which has a secondary amine structure. Savinell *et al.* disclose such basic polymers, including polybenzamidazole, doped with as strong acid, such as phosphoric or sulfuric acid, the resulting composition being used as a fuel cell electrolyte. These electrolytes

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are stable, sufficiently conductive up to 200 °C (392 °F), and overcome problems with catalyst stability. Because of these reasons, and because these electrolytes would conduct protons in the same way as phosphoric acid itself, it would be obvious to use the acid-doped polymers of Savinell *et al.* as the electrolyte in the fuel cell of Maru *et al.*, who disclose an operating temperature of up to 350 °F (177 °C). Determining the optimal pressure differential would be within the skill of the artisan, as taught by Maru *et al.* (column 3, lines 58-64).

The disclosure is objected to because of the following informalities: The specification, on page 8, refers to figure 1 and drawing numerals 20a, 20b, 22a and 22b. These numerals, however, do not appear until figure 2. Appropriate correction is required.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carlstrom *et al.* (US 6,497,971) discloses a fuel cell with selective pressure variation and dynamic inflection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is (703) 308-0433. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on (703) 308-2383. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

sjk

March 9, 2003



STEPHEN KALAFUT
PRIMARY EXAMINER
GROUP

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